

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Jean J. Suh d/b/a Radio Hankook	)	File No. EB-01-ST-091
	)	NAL/Acct. No. 200232980001
Licensee of Station KSUH(AM)	)	FRN 0006-1414-02
Puyallup, Washington	)	
	)	
and	)	
	)	
Licensee of Station KWYZ(AM)	)	
Everett, Washington	)	

**FORFEITURE ORDER**

**Adopted: August 27, 2003****Released: August 29, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Jean J. Suh d/b/a Radio Hankook (“Ms. Suh”),<sup>1</sup> licensee of Station KSUH(AM), Puyallup, Washington, and Station KWYZ(AM), Everett, Washington, for willful violation of Sections 11.35(a), 11.61 and 17.4(g) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Ms. Suh’s failure to have operational Emergency Alert System (“EAS”) equipment, failure to conduct required weekly and monthly EAS tests, and failure to post the Antenna Structure Registration number so that it is readily visible on or near the base of the KWYZ tower.

2. On August 28, 2002, the Commission’s Seattle, Washington Field Office (“Seattle Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Ms. Suh for a forfeiture in the amount of twenty two thousand dollars (\$22,000).<sup>3</sup> Ms. Suh filed a response to the NAL on September 27, 2002, and supplemented her response on October 25, 2002.

---

<sup>1</sup> On November 15, 2002, the Commission’s Media Bureau granted short-form applications (FCC Form 316) to assign the licenses for KSUH(AM) and KWYZ(AM) from Jean J. Suh to Radio Hankook, Inc. File Nos. BAL-20021023AAO and BAL-20021023AAP. These assignments were consummated on December 1, 2002. For convenience, we will continue to refer to the licensee as Ms. Suh.

<sup>2</sup> 47 C.F.R. §§ 11.35(a), 11.61 and 17.4(g).

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232980001 (Enf. Bur., Seattle Office, released August 28, 2002).

## II. BACKGROUND

3. On March 29, 2001, in response to a complaint alleging violations of Commission rules at KSUH, agents from the Seattle Office inspected the KSUH transmitter site and attempted to inspect the KSUH studio. The agents observed that there was no ASR number posted on or near the base of the KSUH antenna structure and that the paint on the structure was peeling and faded. Due to language barriers with KSUH staff,<sup>4</sup> the agents postponed the inspection of the studio. On April 27, 2001, the agents again attempted to inspect the KSUH studio, but found that the station was in the process of relocating its studio. The agents discussed the EAS requirements with Ms. Suh and provided her a copy of the AM Broadcast Station Self-Inspection checklist, but did not attempt an inspection of the studio at that time.

4. On May 3, 2001, agents from the Seattle Office inspected the KWYZ transmitter site. The agents observed that there was no ASR number posted on or near the base of the KWYZ antenna structure.

5. On November 30, 2001, the agents re-inspected the KSUH and KWYZ transmitter sites and observed that there were still no ASR numbers posted on or near the base of the towers and that the paint on the KSUH tower was still peeling and faded. The agents then inspected the new co-located KSUH/KWYZ studio. The agents observed that EAS equipment was installed at the studio, but the equipment was not operable. The equipment was set in manual mode, requiring operator interface to conduct any EAS test or alert. However, the operator on duty at the time of the inspection was unable to operate the equipment. In addition, no tape to record EAS tests was installed in the equipment and there were no logs to show that monthly and weekly EAS tests had been received or retransmitted at any time during the past year.

6. On January 22, 2002, the Seattle Office issued a Notice of Violation ("NOV") citing Ms. Suh for, among other violations, failure to maintain operational EAS equipment and to conduct required monthly and weekly EAS tests, failure to post the ASR numbers on or near the base of the KSUH and KWYZ towers, and failure to clean or repaint the KSUH tower as often as necessary to maintain good visibility of the tower in violation of Sections 11.35(a), 11.61, 17.4(g) and 17.50 of the Rules.<sup>5</sup> In her response to the NOV, Ms. Suh stated that the EAS equipment had been modified to facilitate automatic retransmission of EAS tests and alerts, that an EAS log had been established, and that the ASR numbers had been posted at the towers. Ms. Suh also stated that she had received an estimate to paint the KSUH tower, but indicated that she does not own the tower and was trying to get financial help to paint the tower. An agent from the Seattle Office subsequently checked the Commission's ASR database and found that the ASRs for the KSUH and KWYZ towers list Jean J. Suh d/b/a Radio Hankook as the owner of the towers.

7. On August 28, 2002, the Seattle Office issued an *NAL* for a \$22,000 forfeiture to Ms. Suh for failure to maintain operational EAS equipment and to conduct required monthly and weekly EAS tests, failure to post the ASR numbers on or near the base of the KSUH and KWYZ towers, and failure to clean or repaint the KSUH tower as often as necessary to maintain good visibility of the tower in willful violation of Sections 11.35(a), 11.61, 17.4(g) and 17.50 of the Rules.<sup>6</sup> Ms. Suh filed a response to the

---

<sup>4</sup> KSUH is a Korean language station.

<sup>5</sup> 47 C.F.R. § 17.50.

<sup>6</sup> The *NAL* calculated the \$22,000 forfeiture as follows: \$8,000 for failure to maintain operational EAS

*NAL* on September 27, 2002, and supplemented her response on October 25, 2002. Ms. Suh states that she is a Korean American and English is her second language, but despite the language barrier she has worked diligently to operate KSUH and KWYZ in compliance with the Commission's rules. With respect to the EAS violations, Ms. Suh states that after receipt of the NOV, the EAS equipment was modified to facilitate automatic retransmission of EAS tests and alerts. However, the EAS equipment subsequently failed to operate correctly so new equipment was purchased and installed. Ms. Suh states that the new EAS unit is set to operate automatically, so no operator interface is required to conduct or log EAS tests. Ms. Suh also states that the ASR numbers have been posted on the KSUH and KWYZ towers. Ms. Suh disputes the finding in the *NAL* that the KSUH tower requires painting to maintain good visibility. Furthermore, Ms. Suh states that she is not the owner of the KSUH tower. In this regard, she states that she previously believed that she owned this tower and therefore registered the tower in her name. However, Ms. Suh asserts that the KSUH tower is in fact owned by Ray Courtemanche and Cheri Patch, who lease the tower site and tower to her. In support of this assertion, Ms. Suh provides a copy of a lease agreement for the tower site and tower between Joy Broadcasting, Inc. ("Joy"), the predecessor licensee of KSUH, and Mr. Courtemanche and Ms. Patch. Ms. Suh states that Joy assigned its rights under the lease agreement to her when she purchased the station, that the term of the lease has expired and she has been renting both the tower site and the tower on a month-to-month basis, and that she is currently in negotiations to purchase the tower site and tower or execute a long-term lease. Ms. Suh asserts if she is able to acquire the KSUH tower, she will make arrangements to have the tower painted. Finally, Ms. Suh claims that payment of the proposed forfeiture would impose a financial hardship on the stations and provides the stations' tax returns for 1998 through 2001 in support of this claim. Ms. Suh accordingly requests that the forfeiture be canceled or reduced to no more than \$3,000.

### III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Suh's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup>

9. Section 11.35(a) of the Rules requires broadcast stations to install and maintain operational EAS equipment so that monitoring and transmitting functions are available during the times

---

equipment, \$2,000 for failure to post the ASR number on the KSUH tower, \$2,000 for failure to post the ASR number on the KWYZ tower, and \$10,000 for failure to repaint the KSUH tower as often as necessary to maintain good visibility of the tower. The *NAL* did not propose a separate forfeiture for failure to conduct required monthly and weekly EAS tests as the amount for that violation is subsumed under the failure to maintain operational EAS equipment violation.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

when the station is in operation. Ms. Suh does not dispute that the stations' EAS equipment was not operational at the time of the inspection or that the stations had not conducted required monthly and weekly EAS tests. Accordingly, we conclude that Ms. Suh willfully<sup>10</sup> violated Sections 11.35(a) and 11.61 of the Rules.

10. Section 17.4(g) of the Rules requires that the ASR number be posted in a conspicuous location so that it is readily visible near the base of the antenna structure. Section 17.50 of the Rules provides that antenna structures which are required to be painted must be cleaned or repainted as often as necessary to maintain good visibility. The information provided by Ms. Suh indicates that although she is listed as the owner of the KSUH tower on the tower's ASR, she is not in fact the owner of that tower. Accordingly, we will cancel the \$2,000 forfeiture proposed in the *NAL* for failure to post the ASR number at the KSUH tower and the \$10,000 forfeiture proposed in the *NAL* for failure to clean or repaint the KSUH tower as often as necessary to maintain good visibility.<sup>11</sup> However, Ms. Suh does not dispute that she is the owner of the KWYZ tower or that she had not posted the ASR number at this tower at the time of the inspection. We therefore find that Ms. Suh willfully violated Section 17.4(g) by failing to post the ASR number at the KWYZ tower.

11. Ms. Suh asserts that new EAS equipment has been installed at the station and that the ASR number has been posted at the KWYZ tower. However, the Commission has repeatedly stated that remedial efforts to correct a violation are not mitigating factors warranting reduction of a forfeiture.<sup>12</sup>

12. Ms. Suh also asserts that payment of the proposed forfeiture would impose a financial hardship on the stations and submits the stations' tax returns for 1998 through 2001 in support of this assertion. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>13</sup> After considering the financial information submitted by Ms. Suh, we conclude that the stations' gross revenues are sufficient to enable it to pay a \$10,000 forfeiture.

13. We have examined Ms. Suh's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that

---

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> The owner of an antenna structure is primarily responsible for maintaining the structure in accordance with Part 17 of the Rules. Although tenant licensees on a tower may be required to undertake efforts to maintain the tower in the event that the owner is unable to do so, e.g., in cases of abandonment, negligence, or bankruptcy, under normal circumstances, the Commission only looks to the owner to maintain the tower. See *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272, 4294 (1995).

<sup>12</sup> See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>13</sup> See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991). The Commission has also stated that if gross revenues are sufficiently great, the existence of operating losses does not by itself mean that a company cannot afford to pay a forfeiture. *Id.*

Ms. Suh failed to maintain operational EAS equipment at the stations and failed to post the ASR number at the KWYZ tower in willful violation of Sections 11.35(a) and 17.4(g) of the Rules, and we find no basis for canceling or reducing the forfeitures proposed in the *NAL* for these violations. However, we cancel the \$2,000 forfeiture proposed in the *NAL* for failure to post the ASR number at the KSUH tower and the \$10,000 forfeiture proposed in the *NAL* for failure to clean or repaint the KSUH tower as often as necessary to maintain good visibility. Accordingly, we reduce the total forfeiture amount from \$22,000 to \$10,000.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>14</sup> Jean J. Suh d/b/a Radio Hankook **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful violations of Sections 11.35(a), 11.61 and 17.4(g) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232980001 and FRN 0006-1414-02. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Jean J. Suh d/b/a Radio Hankook, 807 South 336th Street, Federal Way, Washington 98030, and to her counsel, Matthew H. McCormick, Esq., Reddy, Begley & McCormick, LLP, 2174 K Street, N.W., Suite 350, Washington, D.C. 20037-1845.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> See 47 C.F.R. § 1.1914.